

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

DELIO J. VALDIVIA

Claim No. CU -4317

Decision No. CU -4746

Under the International Claims Settlement
Act of 1949, as amended

Appeal and objections from a Proposed Decision entered on April 15, 1970.
No hearing requested.

Hearing on the record held September 8, 1971.

FINAL DECISION

By Proposed Decision issued April 15, 1970, the Commission denied this claim for failure of proof.

Claimant, a national of the United States at all times pertinent to this claim, has since submitted certain substantiating evidence and the Commission now finds as follows.

Based on evidence including copies of leases, accountings of Cuban Government agencies, registrations of cattle, documentation pertaining to agricultural equipment and motor vehicles, and opinion affidavits of persons familiar with claimant and his business activities in Cuba, the Commission finds that claimant operated 21.5 caballerias of land (in five plantations and farms) in Cuba, with some improvements, livestock, agricultural equipment and motor vehicles, all of which were taken from him by the Government of Cuba by Resolutions of October 1, 1963, issued by the National Institute for Agrarian Reform.

These farms and plantations were known as La Concepcion, in Cabaiguan; La Aralia, Santa Teresa de Jesus (or Vendavales), Santa Elena (La Serafina) and Atabales, all of Sancti Spiritus, in Las Villas Province. The Commission finds that there were involved 9.5 caballerias of land planted to sugar cane, and that this had a value of \$38,000; and that 12 caballerias of land were planted with grass, tobacco, fruit trees, four 2-room houses, two stables and a tobacco

warehouse, all having a value of \$24,000, an aggregate value of \$62,000.

Some of the aforesaid lands were used as cattle breeding farms and there were taken 225 head of cattle, as described in the record, and two mules; all having a value of \$27,200.

The agricultural equipment taken from claimant included plows, animal food-cutting machine, three motors for water pumping, three water pumps and related equipment and the Commission finds that at the time of loss, this equipment had a value of \$800.

Claimant also owned certain loading and transportation equipment which he describes as follows:

1	1956 Ford Dump truck, with iron body for cane load	\$3,500
1	1951 Chevrolet Dump truck, wooden body for cane loading	2,400
1	1950 Chevrolet Dump truck, wooden body for cane loading	1,800
1	1955 Dodge Sedan fully equipped	2,500

The record includes in this connection, a Certificate of Registration dated May 30, 1961 of a 1950 Chevrolet truck, under repair; a Certificate of Ownership of a Ford Dump truck, dated February 7, 1957, reciting a price of \$4,600; and a bill dated February 20, 1952 for a 1952 Chevrolet chassis, reciting \$3,440 as due. The Commission holds that these vehicles were all subject to depreciation from the date of acquisition to the date of loss. Normally such depreciation is 15 per cent per annum. The Commission, however, has also consulted the Guide of the National Automobile Dealers Association. On this basis the Commission finds the vehicles had these values on October 1, 1963:

1956 Ford dump truck	\$1,076.00
1951 Chevrolet dump truck, residual value	538.00
1950 Chevrolet dump truck, residual value	430.40
1955 Dodge Sedan, with all equipment	<u>479.50</u>
	\$2,523.90

As the record indicates that claimant was married when the aforesaid properties were acquired, they were subject to the community property law of Cuba. As the record indicates that claimant's spouse is a Cuban national, her interest cannot be considered. The Commission finds that claimant

suffered a loss of \$46,161.95 within the scope of Title V of the Act, in connection with the taking of his above-described properties on October 1, 1963.

The Commission further finds that claimant and his spouse owned household furniture and furnishings at their home at 272 Cespedes Street, Sancti Spiritus.

On December 6, 1961, the Cuban Government published its Law 989 pursuant to which the Cuban Government took all properties of persons who left the country. The record shows that claimant left Cuba on about May 10, 1968. Accordingly, the Commission finds that the household furniture and furnishings were taken on May 10, 1968.

The Commission has considered the listing the claimant has supplied and finds the value of \$3,200 to be fair and reasonable. For the reasons stated above, the interest of his spouse cannot be considered here, and the Commission finds that claimant suffered a loss of \$1,600 in connection with the taking of the household goods on May 10, 1968.

Although the claim for loss of personalty arose subsequent to the close of the period for filing claims of this nature against the Government of Cuba, the Commission has held that it will consider on their merits claims for losses sustained subsequent to the deadline, so long as consideration thereof does not impede the determination of claims which arose prior to the close of the filing period. (See Claim of Vivian Morales, Claim No. CU-8739.)

Claimant also asserts \$4,750 as the value of a 50% interest in a sugar cane syrup and dry molasses candy industry. The record includes a partnership agreement of October 16, 1953, with one Jose Calderin whereby they formed a partnership to be known as "Valdivia y Calderin" to operate a firm "El Palmar", registered in 1954. The capital was 6,000 pesos, contributed equally. However, although no specific taking of this enterprise has been shown, the record is devoid of any evidence of its value at the time of probable loss. Any finding the Commission might make in this connection would be purely conjectural and speculative. Accordingly this item of claim remains denied.

It is noted that if probative evidence is received as to the above item of claim in sufficient time to permit consideration thereof before the close of the program on June 30, 1972, the Commission will reopen the claim. Such evidence should be received on or before May 1, 1972 in order to permit adequate consideration thereof.

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement. (See Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered as follows:

<u>FROM</u>	<u>ON</u>
October 1, 1963	\$46,161.95
May 10, 1968	<u>1,600.00</u>
	\$47,761.95


Accordingly, the following Certification of Loss will be entered and the remainder of the Proposed Decision as amended herein, is affirmed.


CERTIFICATION OF LOSS

The Commission certifies that DELIO J. VALDIVIA suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Forty-Seven Thousand Seven Hundred Sixty-One Dollars and Ninety-Five Cents (\$47,761.95) with interest thereon at 6% per annum from the aforesaid dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Final
Decision of the Commission

SEP 8 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

**FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579**

IN THE MATTER OF THE CLAIM OF

DELIO J. VALDIVIA

**Under the International Claims Settlement
Act of 1949, as amended**

Claim No. CU -4317

Decision No. CU 4746

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$108,150.00, was presented by DELIO J. VALDIVIA and is based upon the asserted loss of real and personal property in Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)


Claimant has asserted a loss in the amount of \$108,150.00 for the land and buildings, cattle, trucks, automobiles, agricultural implements, water pumps, motors, furniture and fixtures and an investment in the sugar cane syrup industry. Affidavits in support of his ownership of certain Cuban property and the value thereof have been submitted. However, claimant has submitted no evidence to establish his United States nationality.

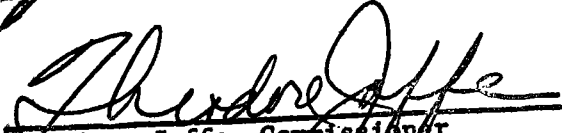
On October 21, 1968, claimant was advised by Commission letter as to the type of evidence proper for submission to establish his claim and his nationality under the Act. No reply or evidence has since been submitted.

Accordingly, the Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership by a United States national of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

15 APR 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner


Sidney Freidberg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

CU- 4317